

STATE OF COLORADO

Bill Ritter, Jr., Governor
James B. Martin, Executive Director

Dedicated to protecting and improving the health and environment of the people of Colorado

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Colorado Department
of Public Health
and Environment

February 13, 2009

Academy Water and Sanitation District
Attention: Richard DuPont
1755 Spring Valley Drive
Colorado Springs, CO 80921

Certified Mail Number: 7007 0220 0001 0160 5979

RE: Service of Notice of Violation/Cease and Desist Order, Number: MO-090213-1

Dear Mr. Dupont:

Academy Water and Sanitation District is hereby served with the enclosed Notice of Violation / Cease and Desist Order (the "NOV/CDO"). This NOV/CDO is issued by the Colorado Department of Public Health and Environment's Water Quality Control Division (the "Division") pursuant to the authority given to the Division by §§25-8-602 and 25-8-605, C.R.S. of the *Colorado Water Quality Control Act*, (the "Act"). The Division bases this NOV/CDO upon findings that Academy Water and Sanitation District has violated the Act, and/or [COG-589020] regulations promulgated pursuant to the Act, as described in the enclosed NOV/CDO.

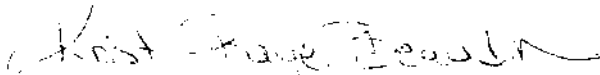
Pursuant to §25-8-603, C.R.S., Academy Water and Sanitation District is required, within thirty (30) calendar days of issuance of this NOV/CDO, to submit to the Division an answer admitting or denying each paragraph of the Findings of Fact and responding to the Notice of Violation.

This action could result in the imposition of civil penalties. The Division is authorized pursuant to §25-8-608, C.R.S. to impose a penalty of \$10,000 per day for each day during which such violation occurs.

Please be advised that the Division is continuing its investigation into this matter and the Division may identify supplementary violations that warrant amendments to this NOV/CDO or the issuance of additional enforcement actions.

Should you or representatives of Academy Water and Sanitation District desire to discuss this matter informally with the Division, or if you have any questions regarding the NOV/CDO, please do not hesitate to contact Ginny Torrez of this office by phone at (303) 692-3612 or by electronic mail at ginny.torrez@state.co.us.

Sincerely,



Kristi-Ray Beaudin, Legal Assistant
Compliance Assurance and Data Management Section
WATER QUALITY CONTROL DIVISION

cc: El Paso County Department of Health and Environment
MS-3 File

ec: Aaron Urdiales, EPA Region VIII
Tim Vrudny, Engineering Section, CDPHE
Dave Knope, Engineering Section, CDPHE
Dick Parachini, Watershed Program, CDPHE
Gary Beers, Permits Unit, CDPHE
Carolyn Schachterle, OPA

Enclosure(s)



COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
DIVISION OF ADMINISTRATION
WATER QUALITY CONTROL DIVISION

NOTICE OF VIOLATION / CEASE AND DESIST ORDER

NUMBER: MO-090213-1

IN THE MATTER OF: ACADEMY WATER AND SANITATION DISTRICT
CDPS PERMIT NO. COG589000
PERMIT CERTIFICATION NO. COG-589020
EL PASO COUNTY, COLORADO

Pursuant to the authority vested in the Colorado Department of Public Health and Environment's (the "Department") Division of Administration by §§25-1-109 and 25-8-302, C.R.S., which authority has been delegated to the Department's Water Quality Control Division (the "Division"), and pursuant to §§25-8-602 and 25-8-605, C.R.S., the Division hereby makes the following Findings of Fact and issues the following Notice of Violation / Cease and Desist Order:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. At all times relevant to the violations cited herein, the Academy Water and Sanitation District ("the District") was a "Special District" formed in El Paso County, Colorado pursuant to the Special District Act, §§32-1-101 through 32-1-1702 C.R.S.
2. The District is a "person" as defined under the Water Quality Control Act, §25-8-103(13), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(73).
3. The District owns and/or operates a wastewater treatment facility located in the Southwest ¼ of the Northwest ¼ of Section 32, Township 11 South, Range 66 West in El Paso County, Colorado (the "Facility").
4. The Facility is the subject of Colorado Discharge Permit System General Permit, Permit No. COG-589000 (the "Permit"). The Permit became effective on November 1, 2005 and is due to expire October 31, 2010. A discharge from the Facility was authorized under the Permit via Permit Certification No. COG-589020 which became effective December 1, 2005 (the "Certification"). The Certification will expire October 31, 2010.
5. The Certification specifies that the District is authorized to discharge effluent wastewater from the Facility through Outfall 001A into Smith Creek. The discharge is subject to the specific effluent limitations and other conditions of the Permit.

6. Smith Creek is "state waters" as defined by §25-8-103(19), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(102).
7. Section 61.8, 5 CCR 1002-61, states in part that "A permittee must comply with all the terms and conditions of the permit."

Quality of the Discharge

8. Pursuant to Part I.B.7.a. of the Permit, the Special Conditions and Waivers of the Certification, and Section VI.A.1 of the Rationale for Certification (the "Rationale"), the District's discharge at Outfall 001A shall not exceed the effluent limitations specified below. These effluent limitations, along with others not subject of this action, are reiterated on the Discharge Monitoring Reports ("DMRs") provided to the District by the Division.

EFFLUENT PARAMETER	DISCHARGE LIMITATION	
	30-Day Average	7-Day Average
5-Day Carbonaceous Oxygen Demand ("CBOD ₅ ") (mg/l)	25	40
CBOD ₅ Removal (%)	85	-
Fecal Coliform (#/100ml)	200	400
Total Suspended Solids ("TSS") (mg/l)	75	110

9. Pursuant to the requirements of Part I.C.2.a. of the Permit, to provide an indication of the quality of the wastewater discharged into Smith Creek, the District collects specific samples of the effluent at Outfall 001A.
10. The analytical results of the samples collected at Outfall 001A are summarized and reported to the Division via monthly DMRs which include a certification by the District that the information provided therein is true, accurate and complete, to the knowledge and belief of the District.
11. The DMRs for Outfall 001A for the months of January 2007 through December 2008 include, in addition to other data not subject of this action, the following effluent concentration data for CBOD, TSS and fecal coliform. CBOD₅ removal data are also included.

DMR Reporting Period and Parameter	30-Day Average	7-Day Average
CBOD₅ (in mg/l)	Limit= 25 mg/l	Limit= 40 mg/l
January 1-January 31, 2007	28	-
April 1-April 30, 2007	32	-
November 1-November 30, 2007	27	-

DMR Reporting Period and Parameter	30-Day Average	7-Day Average
December 1-December 31, 2007	34	-
January 1-January 31, 2008	41	41
April 1-April 30, 2008	44	44
June 1-June 30, 2008	34	-
September 1-September 30, 2008	26	-
November 1-November 30, 2008	29	-
CBOD₅ Removal (in %)	Limit = 85 % (minimum)	N/A
May 1-May, 2007	79	-
December 1-December 31, 2007	82	-
January 1-January 31, 2008	76	-
April 1-April 30, 2008	82	-
Fecal Coliform (#/100ml)	Limit = 200 mg/l	Limit = 400 mg/l
September 1-September 30, 2008	397	-
December 1-December 31, 2008	395	-
TSS (mg/l)	Limit = 75	Limit = 110
September 1-September 30, 2008	76	-

12. CBOD₅, CBOD₅ removal, TSS and fecal coliform are “pollutants” as defined by §25-8-103(15), C.R.S, or indicators thereof.
13. The District’s failure to comply with the effluent limitations set forth above constitutes violations of Part I.B.7.a. of the Permit, the Special Conditions and Waivers of the Certification, and Section VI.A.1. of the Rationale.

NOTICE OF VIOLATION

Based on the foregoing Findings of Fact and Conclusions of Law, you are hereby notified that the Division has determined that the District has violated the following sections of the Permit.

Part I.B.7.b. of Permit No. COG00589000 states in part: “In accordance with the Water Quality Control Commission Regulations for Effluent Limitations, Section 62.4, and the Colorado Discharge Permit System Regulations, Section 61.8(2), the permitted discharge shall not contain effluent parameter concentrations, which exceed the following limitations.”

Part I.B.7.b. of Permit No. COG00589000 states in part: "In addition to the concentration limitations for BOD₅ and Total Suspended Solids (TSS) indicated above, unless this provision has specifically been waived in the certification, the arithmetic mean of the BOD₅, or CBOD₅ if identified in the Certification, and TSS concentrations (mechanical facilities only) for effluent samples collected during the calendar month shall demonstrate a minimum of eighty-five (85%) removal BOD₅, or CBOD₅ as measured...."

REQUIRED CORRECTIVE ACTION

Based upon the foregoing factual and legal determinations and pursuant to §25-8-602 and §25-8-605, C.R.S., The District is hereby ordered to:

14. Cease and desist from all violations of the Colorado Water Quality Control Act, §§25-8-101 through 25-8-703, C.R.S., its implementing regulations promulgated thereto and the Permit.

Furthermore, the Division hereby orders the District to comply with the following specific terms and conditions of this Order:

15. Within thirty (30) calendar days of the date of this Order, commence an engineering evaluation by a professional engineer registered in the State of Colorado to identify all performance limiting factors associated with the Facility to determine what measures are necessary to ensure adequate treatment is provided such that fecal coliform, CBOD₅ and CBOD₅ removal limits are consistently met at Outfall 001A. The evaluation shall include, but not be limited to an evaluation of the Division approved aeration equipment and its effectiveness in achieving consistent CBOD₅ and CBOD₅ removal compliance, verification that short-circuiting has been effectively addressed, evaluation of the effectiveness and reliability of the existing disinfection process in consistently complying with effluent fecal coliform limits, an evaluation of the operation and maintenance practices and identification of any deficiencies in this area that impact the Facility's ability to comply with effluent limits and an evaluation of the biosolids accumulation monitoring practices of the District and their effectiveness.
16. By April 30, 2009, submit to the Division a report summarizing the results of the engineering evaluation required by paragraph 15 above. The report shall also include the following:
 - A plan for completing the activities necessary to systematically addressing the facility-specific areas for improvement identified through the evaluation.
 - A plan for systematically obtaining any training the Facility operator needs in order to operate the Facility in a manner such that no violations occur.
 - Recommendations for other measures to optimize treatment or for addressing other deficiencies.
 - A time schedule for addressing, implementing, or completing correction of, each performance limiting factors or other recommendation identified as part of the evaluation. This time schedule shall be based on a noncompliance risk based priority system.

The proposed activities and completion schedules submitted shall become a condition of this Order and the District shall comply with the plan and the completion dates unless notified by the Division, in

writing, that alternate activities and/or time schedule(s) are appropriate. If the Division imposes alternate activities and/or time schedule(s), they shall also become a condition of this Order.

17. By April 30, 2009, submit a biosolids accumulation monitoring plan and schedule for ensuring that, in the future, accumulated sludge is removed prior to it having an impact upon the Facility's ability to comply with effluent limits. The plan shall include a detailed description of the protocol for monitoring biosolids accumulation.
18. By May 30, 2009, submit evidence that accumulated biosolids have been removed from all cells of the Facility. Such evidence shall be in the form of photographs documenting the removal process and a copy of a final invoice from the contractor performing the sludge removal.
19. The District shall submit progress reports every two (2) months to the Division outlining efforts taken to achieve and maintain compliance with this Order. The first report shall be submitted on or before March 15, 2009. At a minimum, each report shall outline activities completed in the previous two (2) months and planned activities for the two (2) months to remain in compliance with this Order. The progress reports shall be required until the issuance of written notice from the Division indicating that the reports are no longer necessary.
20. If the District becomes aware of any situation or circumstances that cause the District to become unable to comply with any condition or time schedule set forth by this Order, the District shall provide written notice to the Division within five (5) calendar days of the District becoming aware of such circumstances. The District's notice shall describe what, if any, impacts will occur on the District's ability to comply with the Colorado Water Quality Control Act, the effluent limitations of the Permit, and any impacts on the remaining conditions and/or time schedules specified by this Order, and what steps are being taken to mitigate the impacts.
21. All documents submitted under this Order shall use the same titles as stated in this Order, and shall reference both the number of this Order and the number of the paragraph pursuant to which the document is required. Within thirty (30) calendar days of receiving Division comments on submitted documents, the District shall revise the submitted document(s) to properly address the Division's comments and resubmit the document(s) for Division review.

NOTICES AND SUBMITTALS

For all documents, plans, records, reports and replies required to be submitted by this Notice of Violation/Cease and Desist Order, the District shall submit an original and one copy to the Division at the following address:

Colorado Department of Public Health and Environment
Water Quality Control Division / WQCD-B2
Compliance Assurance Section
Attention: Ginny Torrez
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

For any person submitting documents, plans, records and reports pursuant to this Notice of Violation / Cease and Desist Order, that person shall make the following certification with each submittal:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

OBLIGATION TO ANSWER AND REQUEST FOR HEARING

Pursuant to §25-8-603, C.R.S. and 5 CCR 1002, §21.11(A) you are required to submit to the Division an answer affirming or denying each paragraph of the Findings of Fact and responding to the Notice of Violation.

Section 25-8-603, C.R.S. and 5 CCR 1002, §21.11 also provide that the recipient of a Notice of Violation may request the Division to conduct a public hearing to determine the validity of the Notice, including the Findings of Fact. Such request shall be filed in writing with the Division and include the information specified in 5 CCR 1002, §21.4(B)(2). Absent a request for hearing, the validity of the factual allegations and the Notice of Violation shall be deemed established in any subsequent Department proceeding.

Both the answer and the request for hearing, if any, shall be filed no later than thirty (30) calendar days after issuance of this action. The filing of an answer does not constitute a request for hearing.

FALSIFICATION AND TAMPERING

Be advised, in accord with §25-8-610, C.R.S., that any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Colorado Water Quality Control Act or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than ten thousand dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

POTENTIAL CIVIL AND CRIMINAL PENALTIES

You are also advised that any person who violates any provision of the Colorado Water Quality Control Act (the "Act"), §§25-8-101 to 703, C.R.S., or of any permit issued under the Act, or any control regulation promulgated pursuant to the Act, or any final cease and desist order or clean-up order issued by the Division shall be subject to a civil penalty of not more than ten thousand dollars per day for each day during which such violation occurs. Further, any person who recklessly, knowingly, intentionally, or with criminal negligence discharges any pollutant into any state waters commits criminal pollution if such discharge is made without a permit, if a permit is required by the Act for such discharge, or if such discharge is made in violation of any permit issued under the Act or in violation of any Cease and Desist Order or Clean-up Order issued by the Division. By virtue of issuing this Notice of Violation / Cease and Desist Order, the State has not waived its

right to bring an action for penalties under §§25-8-608 and 609, C.R.S, and may bring such action in the future.

RELEASE OR DISCHARGE NOTIFICATION

Pursuant to §25-8-601, C.R.S., you are further advised that any person engaged in any operation or activity which results in a spill or discharge of oil or other substance which may cause pollution of the waters of the state, shall notify the Division of the discharge. If said person fails to so notify, said person is guilty of a misdemeanor, and may be fined or imprisoned or both.

EFFECT OF ORDER

Nothing herein contained, particularly those portions requiring certain acts to be performed within a certain time, shall be construed as a permit or license, either to violate any provisions of the public health laws and regulations promulgated thereunder, or to make any discharge into state waters. Nothing herein contained shall be construed to preclude other individuals, cities, towns, counties, or duly constituted political subdivisions of the state from the exercise of their respective rights to suppress nuisances or to preclude any other lawful actions by such entities or the State.

For further clarification of your rights and obligations under this Notice of Violation / Cease and Desist Order you are advised to consult the Colorado Water Quality Control Act, §§25-8-101 to 703, C.R.S., and regulations promulgated thereunder, 5 CCR 1002.

Issued at Denver, Colorado, this 13th day of February, 2009.

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT



Lori M. Gerzina, Section Manager
Compliance Assurance Section
WATER QUALITY CONTROL DIVISION